



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102648-15]

RIN 1545-BM66

Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Request for information.

SUMMARY: The Department of the Treasury invites public comments with regard to future guidance required to implement provisions of the Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law No. 113-235 (MPRA). MPRA generally permits a sponsor of a multiemployer defined benefit plan that is in critical and declining status to suspend certain benefits following the provision of specified notice, consideration of public comments, approval of an application for suspension, and satisfaction of other specified conditions (including a participant vote).

DATES: Comments must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-102648-15), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8

a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-102648-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102648-15). All materials submitted will be shared with the Department of Labor and the Pension Benefit Guaranty Corporation, and will be available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Concerning the request for information, Jamie Dvoretzky at (202) 317-4102; concerning submission of comments, Regina Johnson at (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 212 of the Pension Protection Act of 2006, Public Law No. 109-280 (120 Stat. 780 (2006)) (PPA '06) added section 432 of the Internal Revenue Code (Code), which prescribes funding rules for certain multiemployer defined benefit plans in endangered and critical status and permits plans in critical status to be amended to reduce certain otherwise protected benefits (referred to as "adjustable benefits"). Section 202 of PPA '06 amended section 305 of the Employee Retirement Income Security Act of 1974, Public Law No. 93-406 (88 Stat. 829 (1974)), as amended (ERISA), to prescribe parallel rules. PPA '06 provided that section 432 and ERISA section 305 would sunset for plan years beginning after December 31, 2014. However, section 101 of MPRA made them permanent, with certain modifications.

Section 201 of MPRA amended Code section 432 to add a new status, called "critical and declining status," for multiemployer defined benefit plans. Section 432(b)(6)

provides that a plan in critical status is treated as being in critical and declining status if the plan satisfies the criteria for critical status, and in addition is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (or 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80 percent).¹

Section 201 of MPRA also amended section 432(e)(9) to prescribe benefit suspension rules for multiemployer defined benefit plans in critical and declining status. Section 432(e)(9)(A) provides that notwithstanding section 411(d)(6) and subject to the requirements of section 432(e)(9)(B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits that the sponsor deems appropriate. Section 432(e)(9)(B) defines “suspension of benefits” as the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits, and sets forth other rules relating to suspensions. In the case of plans with 10,000 or more participants, section 432(e)(9)(B) requires the plan sponsor to select a plan participant in pay status (who may also be a plan trustee) to act as a retiree representative throughout the suspension approval process.

Section 432(e)(9)(C) prescribes the conditions that must be satisfied before a plan sponsor may suspend benefits. For example, section 432(e)(9)(C)(i) provides that the plan actuary must certify, taking into account the proposed suspensions of benefits (and, if applicable, a proposed partition of the plan under section 4233 of ERISA), that

¹ Section 201(a) of MPRA makes parallel amendments to section 305 of ERISA. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Department of the Treasury has interpretive jurisdiction over the subject matter of this document for purposes of ERISA as well as the Code.

the plan is projected to avoid insolvency within the meaning of section 418E, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or, if no such expiration is set, indefinitely. Section 432(e)(9)(D) contains limitations on the benefits that may be suspended. For example, section 432(e)(9)(D)(ii) limits the applicability of a suspension in the case of a participant or beneficiary who has attained age 75 as of the effective date of the suspension and section 432(e)(9)(D)(iii) provides that no benefits based on disability (as defined under the plan) may be suspended.

Section 432(e)(9)(E) prescribes rules relating to possible benefit improvements while a suspension of benefits is in effect. Section 432(e)(9)(F) contains notice requirements associated with a suspension of benefits. These include the requirement under section 432(e)(9)(F)(i) that no suspension of benefits may be made unless notice to specified parties of the proposed suspension has been given by the plan sponsor (in the form and manner to be prescribed in guidance) concurrently with an application for approval of the suspension. Section 432(e)(9)(G) describes the process for approval or rejection of a plan sponsor's application for a suspension of benefits, including that the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Secretary of Labor, shall approve an application upon finding that the plan is eligible for the suspension and has satisfied the criteria of section 432(e)(9)(C), (D), (E), and (F). As part of this process, section 432(e)(9)(G)(ii) requires the publication of a request for comments within 30 days after receipt of an application for suspension of benefits, and section 432(e)(9)(G)(iii), (iv) and (v) prescribes rules for agency action and review of the application.

Section 432(e)(9)(H) contains rules relating to the participant vote that is required before any suspension of benefits may take effect, with special rules for systemically important plans. The special rules include an opportunity for the Participant and Plan Sponsor Advocate selected under section 4004 of ERISA to submit recommendations with respect to a suspension in certain circumstances. Section 432(e)(9)(I) contains provisions relating to judicial review.

An application for approval of a plan amendment to suspend benefits may be made in combination with an application to the PBGC for a partition of the plan, and a plan sponsor also may ask the PBGC for technical or financial assistance with a merger. The PBGC is issuing its own request for information to seek comment on the processes associated with applying for partition or merger assistance, including how such processes should be coordinated with the benefit suspension process. The agencies will coordinate on the development of processes that will apply to applications falling within their respective jurisdictions.

Request for Information

Comments are requested on matters that may be addressed in future guidance implementing section 432(e)(9), and in particular on the following:

1. How should future guidance address actuarial and other issues, including duration, related to the following certifications and determinations:
 - a. The actuary's certification under section 432(b)(3) that a multiemployer plan is in critical and declining status;

- b. The actuary's section 432(e)(9)(C)(i) projection of continued solvency (taking into account the proposed suspension and, if applicable, a proposed partition under section 4233 of ERISA); and
 - c. The plan sponsor's section 432(e)(9)(C)(ii) determination that the plan is projected to become insolvent unless benefits are suspended?
- 2. For purposes of the section 432(e)(9)(D)(iii) limitation that a suspension is not permitted to apply to benefits based on disability (as defined under the plan), how can a plan sponsor identify which benefits are based on disability?
- 3. For participants who have not yet retired:
 - a. What practical issues should be considered as a result of the fact that their benefits are not yet fixed (for example, their benefits could vary as a result of future accruals, when they decide to retire and which optional form of benefit they select)?
 - b. What practical issues should be considered in the case of a suspension of benefits that is combined with a reduction of future accruals or a reduction of section 432(e)(8) adjustable benefits (such as subsidized early retirement factors) under a rehabilitation plan?
- 4. For participants who have retired, what practical issues should be considered regarding the section 432(e)(9)(D)(ii) age limitations on suspensions, the application of the section 432(e)(9)(E) rules on benefit improvements, or other provisions?

5. With respect to the section 432(e)(9)(F) requirement to provide notice of the proposed suspension to plan participants and beneficiaries concurrently with the submission of the application for approval:
 - a. What suggestions do commenters have for the steps that are needed to satisfy the requirement to provide notice to the plan participants and beneficiaries “who may be contacted by reasonable efforts,” including the application of that requirement to terminated vested participants?
 - b. What practical issues do plan sponsors anticipate in providing individual estimates of the effect of the proposed suspensions on each participant and beneficiary?
 - c. If the suspension is combined with other reductions as described in request number 3.b, how will the notice of proposed suspension interact with the notices required for those other reductions?
 - d. What issues arise in coordinating benefit protections that are measured as of the date of suspension (such as the restriction on suspensions that apply to a participant or beneficiary who has attained age 75 as of the effective date of the suspension) with the timing of the application, notice, and voting process?
6. With respect to item 5, please provide any examples of notices of proposed suspension that commenters would like to be considered in the development of a model notice.

7. What issues arise in connection with the section 432(e)(9)(G)(ii) requirement to solicit comments on an application for suspension of benefits?
 - a. Should the comments received from contributing employers, employee organizations, participants and beneficiaries, and other interested parties be made available to the public?
 - b. How long should the comment period last?
8. With respect to the section 432(e)(9)(H) participant vote, what issues arise in connection with:
 - a. Preparing the ballot, including developing a statement in opposition to the suspension compiled from comments and obtaining approval of the ballot within the statutory time constraints for conducting a vote; and
 - b. Conducting the vote and obtaining certification of the results of the vote?
9. What other practical issues do commenters anticipate will arise in the course of implementing these provisions?

Timing of Applications and Notices

Section 201(b)(7) of MPRA provides that, not later than 180 days after the date of the enactment of this Act, the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish appropriate guidance to implement section 432(e)(9). In addition, section 432(e)(9)(F)(i) provides that no suspension of benefits may be made unless notice of the proposed suspension

has been given by the plan sponsor concurrently with an application for approval of the suspension, and section 432(e)(9)(F)(iii)(I) provides that notice must be “provided in a form and manner prescribed in guidance.” Section 432(e)(9)(G)(i) provides that the Treasury Secretary, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve an application for suspension upon finding that the plan has satisfied the criteria of section 432(e)(9)(C), (D), (E), and (F). Because appropriate guidance is required to implement section 432(e)(9), including the procedures for the plan sponsor to submit an application for approval of a suspension of benefits and provide concurrent notice, a plan sponsor should not submit an application for a suspension of benefits until a date specified in that future guidance.

Dated: February 11, 2015.

David G. Clunie,
Executive Secretary,
Department of the Treasury.

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